

REMARKS

The Applicants note the Examiner's removal of the prior objections to the drawings and to the specification with appreciation.

The Examiner has rejected claims 1-2, 4, 6, 8-22, 24, 26 and 28-34 under 35 U.S.C. 103 over Wiedner, et al in view of Rohrbach, et al. It is respectfully reasserted that this ground of rejection is improper. Each of the applied references, both in combination and individually, are very different than the claimed invention. Further, there is no motivation or suggestion in the art to inspire one skilled in the art to combine these references, as is required by law.

The invention provides a composite textile article which comprises a) a sheet of a central textile fabric having a front side and a rear side; said sheet of central textile fabric being water vapor permeable, and which sheet of central textile fabric comprises a plurality of fibers having semi-opened micro-cavities; and which fibers have been impregnated with at least one biological and/or chemical decontamination reagent in an amount sufficient to chemically modify, neutralize and/or decontaminate chemical and/or biological contaminants; b) a pair of sheets of outer textile fabrics, one of the sheets of outer textile fabrics positioned on the front side of the sheet of central textile fabric and the other sheet of outer textile fabric positioned on the rear side of the sheet of central textile fabric; each sheet of outer textile fabric being water vapor permeable; c) the sheet of central textile fabric and the pair of sheets of outer textile fabrics being attached together via a sealed hem around a perimeter of the sheet of central textile fabric and the pair of sheets of outer textile fabrics, which hem is sealed such that it prevents the at least one biological and/or chemical decontamination reagent from passing through the hem.

The Examiner has applied Wiedner, et al which discloses a composite textile article comprising a central textile fabric and a pair of sheets of outer textile fabrics, one of the sheets of the outer textile fabrics being positioned on the front side of the sheet of the central textile fabric and the other sheet of outer textile fabric positioned on the rear side of the sheet of the central textile fabric. The middle layer of the composite prevents direct contact of the outer layers, and the composite prevents the passage of substances such as blood and bacteria, from passing through every layer of the composite. If a substance succeeds in passing through either of the outer layers, it will then encounter the intermediate layer, moving in directions approximately perpendicular to the direction of penetration (see col. 2, lines 22-29). In another embodiment of Wiedner, et al., the intermediate layer consists of an absorbent material, such as foam or absorbent fabric filaments, absorbing any material that passes through one outer layer, and physically preventing the material from passing through to the subsequent outer layer of the composite. Accordingly, it is again respectfully urged that Wiedner, et al produce garments which physically deter the displacement of contaminants through their composite textile article, entirely failing to teach or suggest a chemical modification, neutralization and/or decontamination of chemical and/or biological contaminants.

More particularly, there is no teaching or suggestion in Wiedner, et al., that their intermediate layer may be impregnated with an additive composition within or between fibers which serve a biological and/or chemical decontamination function. The Wiedner garments merely physically deter the displacement of chemical and biological contaminants through their layering, or absorb and retain such chemical and biological contaminants therein. The substances are redistributed or absorbed in the layering, but there is no activity taught or suggested to chemically modify, neutralize and/or decontaminate a substance in textile article via chemical and/or biological decontaminants.

The Examiner admits that Wiedner, et al fails to disclose the use of a biological and/or chemical decontamination reagent, and applies Rohrbach, et al. with its disclosure of

fibers impregnated with a chemical decontamination reagent, such as biological and/or chemical decontamination reagent powder particles, to fill this void. However, it is respectfully asserted that such is an improper combination of references. It is respectfully submitted that the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

In the instant application, the Examiner has done little more than cite references to show that one or more elements or some combinations thereof, when each is viewed in a vacuum, is known. However, the claimed invention directed to a new combination of elements. The Patent and Trademark Office Board of Appeals and Interferences stated the following in *Ex parte Clapp*, 227 USPQ 972 (1985), at page 973:

Presuming arguendo that the references show the elements or concepts urged by the Examiner, the Examiner has presented no line of reasoning, and we know of none, as to why the artist when viewing only the collective teachings of the references would have found it obvious to selectively pick and choose various elements and/or concepts from the several references relied on to arrive at the claimed invention. In the instant application, the Examiner has done little more than cite references to show that one or more elements or some combinations thereof, when each is viewed in a vacuum, is known. The claimed invention, however, is clearly directed to the combination of elements. That is to say, applicant does not claim that he has invented one or more new elements but has presented claims to a new combination of elements. To support the conclusion of the claimed combination is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed combination where the Examiner must present a convincing line of reasoning as to why the artist would have found the claimed invention to have been obvious in light of the teaching of the references.

With the above directives, consideration must be given as to whether the combination of references in the manner set forth in the Office Action is proper to render the applicant's invention obvious in view thereof. The requisite motivation to combine the applied references must stem from some teaching, suggestion or interest in the prior art as a whole or from knowledge generally available to one having ordinary skill in the art. See *Uniroyal, Inc. v. Rudkin Riley, Corp.*, 837 F. 2d 1044, 5 USPQ 2d 1434 (Fed. Cir. 1988);

*Ashland Oil, Inc. v. Delta Resin And Refractories, Inc.*, 776 F. 2d 281, 227 USPQ 657 (Fed. Cir. 1985). Obviousness cannot be established by hindsight combination to produce the claimed invention. *In re Gorman*, 933 F.2d 982, 986, 18 USPQ2d 1885, 1888 (Fed.Cir.1991). It is the prior art itself, and not the Applicants' achievement, that must establish the obviousness of the combination.

It is respectfully asserted that the combination of the Wiedner, et al. reference with the Rohrbach, et al. reference, which pertains solely to a fiber mat filter device for air cleaning system and removing cabin air odor, fails to provide the requisite motivation described above. There is no motivation in either reference teaching or suggesting that one skilled in the art should combine the separate disclosures to arrive at the presently claimed invention. There must be something in the applied references that clearly teaches or suggests that one skilled in the art should form the claimed invention upon a reading of the references, rather than the simple assumption that one could achieve the claimed invention from the teachings of the references after reading of Applicants' disclosure.

In view of the absence of this motivation, it is respectfully submitted that the Examiner is reconstructing the art in light of Applicants' disclosure. The point in time that is critical for an obviousness determination is at the time the invention. "To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher." *W.L. Gore & Assocs., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983). An invention cannot be deemed unpatentable merely because, in a hindsight attempt to reconstruct the invention, one can find elements of it in the art. It must be shown that the invention as a whole was obvious at the time the invention was made without knowledge of the claimed invention. *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 5 U.S.P.Q.2d 1434, 1438 (CAFC 1988). Applicants submit that the Examiner is looking beyond the teachings of the references. There is no suggestion that the Rohrbach, et al powder filled fibers could should be used to form a textile article, and

certainly there is no suggestion that Rohrbach, et al powder filled fibers should be used in the Wiedner, et al structure.

It is further respectfully submitted that the Examiner is incorrect that the Wiedner, et al. reference teaches a sealed hem. The claimed structure requires a sealed hem around a perimeter of the sheet of central textile fabric and the pair of sheets of outer textile fabrics, which hem is sealed such that it prevents the at least one biological and/or chemical decontamination reagent from passing through the hem. Wiedner, et al. teaches "displaced seams", rather than seams that are positioned one on top of another (see col. 2, line 62, through col. 3, line 11) that *obstruct, but do not prevent*, the passing of contaminants through their article, as the Examiner argues. In an article formed from the teachings of Wiedner, et al., the seams are points of failure where "substances are hindered less in passing through the seam positions then they are in passing through the individual layers" (see col. 3, lines 6-11). Wiedner teaches displacing these seams (see Fig. 2) such that a contaminant will not directly flow through the seams of all layers as would happen if the seams were right on top of each other. This disclosure concludes, *ipso facto*, that the displaced seams do not prevent the flow of contaminants through their composite, and even hypothetically would not prevent a biological and/or chemical decontamination reagent from passing through the composite. It is respectfully submitted that this specific disclosure is direct evidence that Wiedner, et al. fails to teach a sealed hem, i.e. if a sealed hem did exist, it would not be the case that substances are hindered less in passing through the seam positions then they are in passing through the individual layers. The Examiner argues that Wiedner clearly discloses that the seams may be displaced relative to one another to ensure that a path is not offered to a liquid or bacteria through the stitches. Such is incorrect. Rather, the seams are displaced so that a simple, direct path is not offered. Liquid or bacteria will still pass through the stitches. A sealed hem as claimed, which is sealed by methods such as heat sealing or welding, prevents the contaminants from passing through the hem completely. Such is neither taught nor suggested by any of the applied references.

Throughout the Office Action, the Examiner points to various portions of Wiedner, et al. and Rohrbach et al. to support this obviousness rejection. Applicants respectfully point out that much of the text to which the Examiner directs Applicants does not correlate with the positions the Examiner is making. In some instances, it appears that the Examiner directs the Applicant to specific text in the Wiedner, et al. reference when the actual support is found in the Rohrbach et al. reference. For example, in rejecting claim 14, the Examiner points to col. 3, lines 50-64 and Figs. 2-3 of Wiedner, but the referenced disclosure is not present in Wiedner. It appears that the Examiner intended to reference Rohrbach, et al. for this disclosure. Additionally, in rejecting claims 15 and 16, the Examiner points to col. 2, lines 6-14; col. 3, lines 23-26 and 58-64; and col. 6, lines 25-42 of Wiedner, but Wiedner does not support this disclosure. It again appears that the Examiner intended to reference Rohrbach, et al. for this disclosure.

Additionally, some sections of text that the Examiner directs Applicant to does not support the positions the Examiner takes. For example, in rejecting claims 9-10 and 29-30, the Examiner points Applicants to col. 3, lines 38-54 of Wiedner, et al. for support that the central textile material of Wiedner may be liquid impermeable. However, this section describes the inclusion of an impermeable layer in addition to a net-like or absorbent intermediate layer at critical positions. This impermeable layer is not characterizing the intermediate layer, but rather is describing an additional layer of material to be used together with the intermediate layer. Further, this impermeable layer is not positioned as an interior layer of the structure, but as an exterior layer that offers additional support at certain areas, e.g. an elbow area, without lining the entire article with said impermeable layer which would destroy breathability of the article. Additionally, in rejecting claims 17-18 and 31-32, the Examiner argues that Wiedner discloses an article wherein a breathable atmosphere may be passed through the composite to thereby chemically modify, neutralize and/or decontaminate chemical contaminants from the breathable atmosphere. This is incorrect. There is simply no disclosure in Wiedner, et al. that teaches the chemical modification, neutralization and/or decontamination of chemical contaminants from a breathable atmosphere. Applicants'

further urge that the Examiner may be misinterpreting the breathability of a fabric with the chemical filtration of breathable air. Breathable fabrics are porous materials that allow water molecules in the form of water vapor to pass through their pores, while preventing liquid water from passing through. This is purely a physical transfer of molecules through the fabric. In contrast, the chemical filtration of breathable air involves the a chemical modification, neutralization and/or decontamination of chemical and/or biological contaminants. Also, in rejecting claims 19-20 and 33-34, the Examiner points to col. 1, lines 1-16 and 43-55; and col. 5, lines 27-35 of Wiedner, et al. However, this text fails to teach a cutout through the material as the Examiner states. Accordingly, it is submitted that significant portions of the support upon which the Examiner relies is either misplaced or improper.

It is respectfully submitted that the combination of Wiedner, et al in view of Rohrbach, et al. does not suggest the instant invention and the rejection is incorrect. For these reasons it is submitted that the rejection of claims 1-2, 4, 6, 8-22, 24, 26 and 28-34 under 35 U.S.C. 103 over Wiedner, et al in view of Rohrbach, et al. should be rescinded.

The Examiner has rejected claims 3, 5, 23 and 25 under 35 U.S.C. 103 over Wiedner, et al in view of Rohrbach, et al, and further in view of Pike, et al. It is respectfully asserted that this ground of rejection is incorrect. The arguments over Wiedner, et al in view of Rohrbach, et al, are repeated from above.

Pike has been cited to show that it would be obvious to impregnate areas between the fibers of the claimed invention with at least one biological and/or chemical decontamination reagent. However, in this regard, it is respectfully submitted that Pike, et al. adds nothing to Rohrbach, et al. Rohrbach, et al. itself discloses at col. 4, lines 5-8, that, "[i]n a filter mat 12 of such wicking fibers 20 the area between the individual strands remains relatively free of the fine particles and chemisorptive gas absorbing liquid 18 with which the internal cavities 22 of each fiber 20 are filled." Further, at col. 2, lines 48-53, Rohrbach states that, "[i]n the disclosed device the open space between the wicking

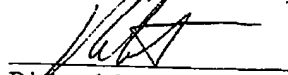
fibers remain so that, in the air stream to be cleaned, the pressure differential problem is minimized and air flow restrictions are not increased by continuous use of the fine particles with the chemical reagent liquid package and the odor vapors which are absorbed.” With regard to Pike, et al. the Examiner points to col. 9, line 65 through col. 10, line 4 which states, “[t]he nonwoven web for the present filter media may contain additives and other fibers known to enhance the performance of filter media. For example, the nonwoven web may contain within its fiber matrix particulates of odor and/or chemical absorbent particles, e.g., activated carbon; filler and bulking fibers; germicides; disinfectants and the like.” It is unclear how this disclosure of Pike, et al. relates to the limitations of claims 3, 5, 23 and 25. It is further re-asserted that both Pike, et al. and Rohrbach, et al. are considered to be non-analogous art for the reasons of record. Regardless, it is respectfully submitted that the disclosure of Pike, et al. together with the disclosures of Wiedner, et al and Rohrbach, et al, fails to teach or suggest the inventions of claims 3, 5, 23 and 25. Accordingly, it is submitted that the rejection is incorrect and should be withdrawn.

In summary, in determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schneck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983). It is respectfully asserted that the invention as a whole would not have been obvious to one of ordinary skill in the art at the time the invention was made, and it is urged that one skilled in the art would not be imbued with an inspiration to produce the instant invention upon a reading of the Wiedner, et al, Rohrbach, et al, and Pike, et al. references. Accordingly, it is requested that each of the rejections be withdrawn.

The undersigned respectfully requests re-examination of this application and believes it is now in condition for allowance. Such action is requested. If the Examiner believes there

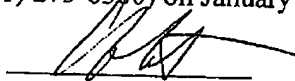
is any matter which prevents allowance of the present application, it is requested that the undersigned be contacted to arrange for an interview which may expedite prosecution.

Respectfully submitted,



Richard S. Roberts  
Reg. No. 27,941  
P.O. Box 484  
Princeton, New Jersey 08542  
(609) 921-3500  
Date: January 19, 2005

I hereby certify that this paper is being facsimile transmitted to the United States Patent and Trademark Office (FAX No. (571) 273-8300) on January 19, 2005



Richard S. Roberts  
Reg. No. 27,941